

Implementation of the Ultra Petita Decision of the Constitutional Court in Indonesian Legal Practice (Study of Constitutional Court Decision Number 30/PUU-XVI/2018)

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Abstract

Court Constitution is a judicial institution new constitution _ formed post amendment to three 1945 Constitution. As a Judicial Institution naturally Court Constitution have authority in interpret constitution. The problem is interpretations Court Constitution to Tested laws _ often cause norm new, thing this considered as ultra petita conducted by the Court Constitution. As a judicial institution that has independent nature already naturally Court Constitution to do interpretations Constitution. Besides that nature text in Constitution which is open (open text) requires there is an interpretation of text that. However implementation to decisions Court Constitution no seldom experience waiver by related institutions.

Keywords

constitutional court; law; legal practice



I. Introduction

Birth Court Constitution as part from institution Justice is part history long state administration in Indonesia. Debate idea *judicial review* already started since discussion the constitution of the state of Indonesia at the beginning his independence. Mohammad Yamin and Soepomo argue in discuss about the need for judicial review and institutions that implement Duty that. Muhammad Yamin believes that the “Great Hall” (MA) needs to be given authority for compare law. However Soepomo reject opinion the because looking at that The Constitution (UUD) which was drawn up at the time that no adhere to understand triad politics and conditions moment that not yet many bachelor law and not have experience *judicial review* .

Based on the consequences _ on naturally Court Given constitution _ orders by the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) must be doing his job with good. A number of the powers of the Court Constitution According to the 1945 Constitution of the Republic of Indonesia, Article 24C is: as following ;

- a. Test the law (UU) against Basic Law (UUD)
- b. Decide dispute authority between State agency whose authority granted by UUD
- c. Decide dispute results election general
- d. Decide dissolution party political

Besides four the authority that has been mentioned on Court The constitution also has one obligation that is cut off the opinion of the House of Representatives (DPR) that President and/ or Vice President has guilty or To do violation law or no again Fulfill requirements as President and/ or Vice President as intended _ in the 1945 Constitution.

Constitution as base beginning in translate Ideology must always animate every the rules existing technical _ below it. For example is score a just and civilized humanity based on the Pancasila ideology is necessary included in the Indonesian constitution which is reflected in several chapter about guarantee and protection Right basic Man that is Article 27, Article 28 of the 1945 Constitution of the Republic of Indonesia. No finished in the existing articles in the 1945 Constitution of the Republic of Indonesia only, but embodied through Law 39 of 1999 concerning Right basic People and rules other technical below. It is very important for conducted because contained text _ in Constitution character open (*open text*).

In skeleton ensure dignity and breath Constitution always present in the rules technically _ _ hierarchy is at under the 1945 Constitution, it is very necessary role Court Constitution in conduct a judicial review of Harmful laws _ right constitutional Indonesian citizen . In literature Dutch and Indonesian law the term “ *rights* ” *test* ” covers 2 kinds ” understanding , namely formal (*formele toetsingsrecht*) and material (*materiele toetsingrecht*). What is meant with right formal test is authority for assess, whether something product law has Fulfill all procedure (procedure) formation as has determined / set in regulation applicable laws _ _ _ or no. Furthermore, what is meant by with right test material is authority for investigate and then assess, whether substance or contents or Theory payload something regulation legislation has in accordance or contrary with regulation more legislation _ tall degrees, and is something power / office certain have authority shape regulation legislation it.

In Thing to do decision to testing Constitution that, the Court Constitution considered often to do decisions that are ultra petita. As example in decision Court Constitution Number 138/PUU-VII/2009 concerning Test Regulation Government Replacement Constitution Number 4 of 2009 concerning Changes to the Law Number 30 of 2002 concerning Commission Eradication Follow Criminal Corruption that governs about mechanism replacement leader Commission Eradication Corruption (KPK).

In the verdict, the Court Constitution state that application Applicant in case the no could received because Applicant no Fulfill legal standing requirements for Becomes Applicant in judicial review cases.⁵ However , inside consideration law , Court Constitution state authorized for test Perpu to Constitution.⁶ Verdict _ this by assertive give a new interpretation on the meaning of the word " law " as declared object of judicial review by firm inside _ Article 24C paragraph (1) of the 1945 Constitution.

Because of that in this paper , the author want to discuss about how far the Court Constitution as given institution _ authority examiner Constitution to Constitution base can show The supremacy of the judiciary in development ideas and restrictions in the verdict .

II. Review of Literature

The history of the power of the New Order clear take effect big to will for to do amendment constitution. Trauma to power that is authoritarianism, make spirit in to do amendment be one demands required in reform. Amendment constitution made as much four times post regime order new collapse produce many very change to administration and guarantees right human rights in Indonesia. The former People's Sovereignty run completely by the Assembly People's Consultation then after there is change held according to Basic Law. Statement that sovereignty in hand people carried out based on the Constitution as well as statement that the State of Indonesia is a state of law, is a firm stance that principle state administration democracy based on the constitution (constitutional democracy) and the rule of law adopted is democratic (democratische)

rechtsstaat). There is three characteristic main characterizing a supremacy constitution namely;

- a. Distinction Among norm law constitution and norms law other
- b. tied up maker Law by Constitution
- c. Existence one institutions that have authority for test constitutionality action law government or law maker.

Dynamics state administration that happened cause the need many changes in the legal and constitutional system. Adoption draft '*checks and balances*', separation power and shift supremacy parliament Becomes supremacy constitution result in need existence institution new one _ is Court Constitution. According to Jimmy Asshidique in his journal entitled "*Court Constitution and Testing law*" change the result in a number of thing:

- a. Need held mechanism for cut off dispute possible authority _ occur between institutions that have equal position _ one each other.
- b. Need institutionalized role law and judges who can control processes and products decisions just politics _ lean self on principle '*the rule of majority*'.

Existence mechanism for decide various disputes that arise that do not could solved through the usual judicial process, such as dispute results elections and demands dissolution something party politics.

III. Results and Discussion

3.1 Independence of the Judiciary

As a country of law of course Indonesia must notice characteristics possessed by the rule of law. According to AVDicey, decipher existence three characteristic important in every State of Law it mentions with the term "The rule of law", namely:

- a. Supremacy of Law;
- b. Equality Before The Law;
- c. Due Process of Law

Besides third what AVDicey said _ _ there is a number of the principles of the rule of law according to "The International Commission of Jurist" namely, (1) States must comply with the law; (2) Government honor rights individual and (3) Judiciary free and not take sides. Necessary things noticed from second view about characteristics of the rule of law is there is justice in the process of running judiciary and independence institution judiciary. In freedom and not siding here law can enforced with fair enough without existence intervention power and interest politics.

Based on provision Article 24 paragraph (1) and paragraph (2) of the 1945 Constitution in conjunction Article 2 of Law Number 24 of 2003 concerning Court Constitution , that position Court Constitution are:

1. Is one _ state institutions that do power the judiciary;
2. Is power an independent judiciary; and
3. As enforcer law and justice.

In life democracy, power justice working as protector rights possible individual _ threatened by interests majority. According to Indonesian Constitution branch power judicial is independent power _ for organize Justice to use enforce law and justice. As one element important in a state of law and democracy, institutions Justice have role

significant. Not seldom occur dispute Among government and society , _ this need solution in judicial environment , neutrality and the concept of ' independence ' must permanent held firmly by the perpetrators of the judiciary .

The doctrine was also conveyed by Sjahran Wet , about presence Justice as one _ important and also the most dominant element that refers to to in enforcement processes law for give justice and certainty law for society and also the government in order to achieve what is it called with checks and balances.

Based on constitutionalism, institutions Justice Becomes element important in To do supervision to performance government with protect rights base civil and political. Existence Settings in restrictions to structure government loaded _ in constitution or what is called with understand constitutionalism, one function more from simply distribution power, but more on effort control and regulation authority and power political so that no made base nor means for act outside _ given authority _ or Act arbitrary in operate power political nor government.

Judge is actor main by praxis in doing function to power justice, because in Settings constitution in Indonesia, has set that power a judiciary consisting of on the functions of the judiciary carried out based on provision law. In operate function power the judiciary, the judge must professional in operate responsibilities and duties regulated _ in law. Next, the judge is expected could apply moral values and integrity and professional could complete cases things he handles by fair with based on the conviction of judges and justice.

Court Constitution has have Regulation Court Constitution Number 09/MK/2006 concerning Enforcement Declaration of the Code of Ethics and Conduct of Constitutional Judges . However , the rules the only give a little Settings about principle caution or *diligence principle* for judges in operate their duties and powers . The Code of Ethics and Conduct set out in Regulation Court Constitution the of them are:

- a) Principle Independence
- b) Principle Impartiality
- c) Principle Integrity
- d) Principle Appropriateness and Courtesy

A number of things that have been outlined on has give description Independence institution judiciary by concepts and powers granted by the constitution that institution Justice is independent and free power _ from intervention . Principle independent power _ this is Thing proper importance _ guarded and maintained in control and shape law to achieve destination law .

3.2 Court Constitution as the Guardian of the Constitution

Court Constitution present as Security constitution from those who try breaking it or also called _ term "*the guardian of the constitution*" and also as interpreter constitution "*the interpreter of constitution*". Court Constitution called as keeper and interpreter from constitution , p that because a lot product the law that was born good that in the form of Constitution have possibility for can contrary with constitution so already Duty Court The constitution protects constitution from violation committed _ on take effect something law. As institution the born court from the amendment process constitution , court Constitution already proper maintain the spirit of control the constitution.

Forming idea Court Constitution is excess from development thinking modern law and state administration that emerged in the 20th century . In the middle countries experience stages change from authoritarian going to democracy , the idea of forming the Constitutional Court became discourse important . Crisis constitutional usually join change

going to regime democracy , in the process of change that 's how the Constitutional Court was formed . Violation after violation to constitution , in perspective democracy , apart from make constitution worth *semantics* also leads to denial to principle sovereignty people .

In spirit its formation Court Constitution is institutions that want guard deal people with the State. rights constitutional citizens and enforcement constitution as *groundnorm* Becomes attention base Court Constitution . Acquired authority _ as one _ effort in doing the is testing to the law, which it means all regulation existing legislation _ underneath no can contrary with what already _ set in constitution by The law in Article 1 paragraph (2) of the 1945 Constitution states that : that sovereignty in hand _ people and implemented according to the Constitution. Implementation According to the Constitution , this is what strengthens reason why role Court Constitution Becomes important , more specifically is to testing the law , because implementation sovereignty people through constitution must controlled and guarded . In chapter 1 paragraph (3) has include that Indonesia is a state of law . With thereby as a state of law contain consequence logical that all Thing based on with law . As per _ unraveled on that our ever had history enough bad in the New Order regime about a lot offenses Right basic Humans and others. Court constitution present as given institution _ for controlling constitution to stay on the line , guarding product law in Thing this Act not to opposite with Constitution .

3.3 Principle Erga Omnes and Strength Execution Decision Court Constitution (MK Decision Number 30/PUU-XVI/2018)

Definition from principle erga omnes alone that is that every Decision Court the Constitution (MK) applies no only for the litigants _ _ but for whole Indonesian people. Principle erga omnes basically for give certainty law to Decision Court Constitution . In Article 10 of the Law Number 8 of 2011 concerning Changes to the Law Number 24 of 2003 concerning Court Constitution that meaning the final decision, the Constitutional Court 's decision also includes it strength bind . That is , the Constitutional Court 's decision can direct get strength law permanent since spoken and not there is effort law that can taken as step object from The Court 's Decision .

Problem act carry on to decision Court Constitution Becomes things to do resolved . because of things the can reduce authority Court Constitution as institution judiciary . Order decision Court Constitutions that often require _ execution from other state agencies , often no held even interpreted repeat .

Besides that problem legitimacy of judges in testing Constitution to The Constitution becomes questionable narrative , how _ organizer power elected executive and legislature _ by directly by the people can supervised and controlled by the Constitutional Court Judge who does not chosen by directly by the people. Point reject thinking thereby is factor separately which is possible follow cause difficulty in reception the decision of the Constitutional Court, so that it also becomes constraint in implementation . However _ with authority shaper laws based on political processes in taking decision with voice most , indeed can so arise possibility that decisions taken _ no describe the mandate of the 1945 Constitution which also protects right basic human , which is incorporated in constitution so that Becomes part from benchmark measuring in evaluate product legislature .

In practice our know a number of denial to products laws issued by the executive and legislative enough issues _ dominant in the masses root grass . Revision to KPK Law , Omnibuslaw , reaps enough controversy and rejection _ big . That thing prove that legitimacy power executive and legislative obtained from society , no fully capable

represent with good will society . Existence Court Constitution as hope small that can change and cancel norms the is Becomes important.

Implementation decision Court Constitution Becomes Thing important thing to do get attention. Not implementation decision Court Constitution could influence authority the Constitutional Court as bodyguard constitution (*the guardian of the constitution*) . by principle decision Court Constitution according to Constitution Court Constitution determine as mentioned in Article 10 paragraph (1) follows explanation Constitution Number 8 of 2011 concerning Change Constitution Number 24 of 2003 concerning Court The constitution which states that, " *The Judgment " Court Constitution is final, i.e decision Court Constitution direct get strength law since spoken and not there is effort law that can taken . The final nature in decision Court Constitution in Constitution this includes strength _ law binding (final and binding) "*".

This is what then arise and take effect principle erga omnes on the verdict Court Constitution because Decision Court Constitution is verdict that is not only bind the parties (inter-parties) will but also must obeyed by anyone (erga omnes). Principle erga omnes reflected from provisions that state bring decision Court Constitution direct could held with no need again decision authorized official _ except regulation legislation arrange another one _ example no implementation decision Court Constitution is in The verdict is not implemented by branch power legislative for example is Decision Number 30/PUU-XVI/2018 which tested Constitution Number 7 of 2017 with Basic Law . Article tested _ related with neutrality of the Regional Representative Council, which in the Election Law Article 128 letter I states " other work ". Organization must have a goal to be achieved by the organizational members (Niati et al., 2021). Applicant decipher spirit representative independent area and conditions on the day this , where almost 50% of DPD members are member Party politics too. This thing is disobedience to constitution and the concept of the Regional Representative Council. On the verdict Court Constitution win applicant and interpret that "other work" includes Party administrators (functionaries) Politics.

However, in practice decision the a little obstructed. had time occur resistance to decision that was submitted to Supreme Court. Though thereby in Decision Supreme Court Number 65/HUM/2018 regarding the judicial review KPU Regulation Number 26 of 2018 concerning Change Second on KPU Regulation Number 14 of 2018 concerning Nomination Individual Participant Election DPD member emphasized that the KPU has Correct doing decision Court Constitution, but what becomes attention is there is effort oppose decision Court Final and Binding Constitution.

Besides that Commission Election General though has enforce Regulation however no can enforce order decision Court Constitution by full. Because it is considered decision the walk in the middle of the selection process already walk. The concerns that arise if decision the held is emergence problem law new. Because of that the Commission enforces the rules just now by retroactive to _ candidate Member of the 2019 Regional Representative Council.

From example on could prove that decision Court Constitution still not enough applicable in its application. Naturally Thing the need cooperation and awareness from every clump power for change Thing that. As long as the sectoral ego is still dominate naturally decision Court Constitution no will never had power, even though already clear nature the decision is final and binding. Court Constitution have function for controlling constitution to be implemented and respected good organizer state power and citizen. Court Constitution as well as interpreter end constitution, if the verdict no held so obedience to law every clump power need questionable.

IV. Conclusion

Study results from article this produce conclusion that as institution A free and independent judiciary , the Court Constitution have Duty for take care and ensure constitution inspire all existing regulations _ below it . Function testing Constitution to Basic Law attached to the constitution must held with full responsibility , because constitution is one _ form state protection of the people who must controlled . In relation with decision that gave birth norm new , that is a things that can done by the Court Constitution . Constitutional judges also have the authority interpretation because text constitution character opentext and very necessary for interpreted . As institution bodyguard constitutional interpretation of the law to Constitution Becomes proper thing _ supervised remember that The law is also a product political from second clump power . As consequences of escort checks and balances the is Required done .

Besides that implementation to decision Court Constitution must also be considered . Obedience to decision court constitution often ignored _ because rated no have legitimacy for create a norm new, because Court Constitution not a legislator or direct executive _ elected by the community . However remember decision court Constitution is final and binding, already duly institutions related doing order decision that. Principle clear erga omnes owned by the Court Constitution Becomes reason logical for doing order verdict.

Suggestion

Writer recommend need existence strength in executive decision Court Constitution with To do supervision to its implementation . That thing can conducted with good collaboration and coordination _ Among state agency. Even supervision implementation the can done by the Court Constitution as not quite enough answer ensure values constitution Correct held until level technical .

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